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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 768

EDWARD ROGERS,

Petitioner,

vs.

WHITE METAL ROLLING AND STAMPING CORPORATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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Respondent prays that the Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit be denied.

REASONS FOR DENYING WRIT.

1. The judgment of the Court below is not final. It was ordered that the judgment of the United

States District Court for the District of Connecticut be vacated and the action remanded in accordance with the opinion of the Court below. (Petitioner's Appendix at page 21)

The petitioner may yet proceed on his cause of action as set forth in his amended complaint. For that reason, the judgment of the lower court is interlocutory rather than final. From the earliest days, the Supreme Court of the United States has refused to accept jurisdiction of interlocutory decrees. **Gibbons v. Ogden**, 6 Wheat. 448, 5 L. Ed. 302.

In **Collins v. Miller**, 252 U.S. 364, 370, 40 S. Ct. 347, 349 (1920), Mr. Justice Brandeis, speaking of the finality requirement said:

> "To be appealable the judgment must be not only final, but complete . . . and the rule required that the judgment to be appealable should be final not only as to all parties, but as to the whole subject matter and as to all the causes of action involved . . . " (Citations Omitted)

The petitioner's sole basis for appeal is the validity of a state statute. Where the validity of a state statute is drawn in question on the ground of repugnance to the Constitution, it has been held that appeal lies only from a final judgment or decree. **Slaker v. O'Connor**, 278 U.S. 188, 73 L. Ed. 258 (1928); **Martinez v. International Banking Corp.**, 220 U.S. 214, 223, 55 L. Ed. 438, 443 (1910).

It is, of course, quite true that there are exceptions to this rule. **Larson v. Domestic & Foreign Corp.**, 337 U.S. 682, 93 L. Ed. 1628 (1948); **Land v. Dollar**,

330 U.S. 731, 91 L. Ed. 1209 (1946). Both of these cases involved the United States Government and questions of such great import that their determination was fundamental to the further conduct of the cases. Because of the fact that both involved restraining orders against the United States, immediate action by the Supreme Court was necessary.

2. The petitioner has endeavored to demonstrate a conflict of authority between the Ninth Circuit and the Second Circuit, viz., **Lamb v. Powder River Livestock Co.**, 132 Fed. 434 (1904). The **Lamb** case involved a statute of the State of Colorado relating to limitation of actions on foreign judgments. It therefore involved the cutting down of a right of action which had already come into existence. The plaintiff had a vested right in the cause of action and thus a property right that was taken away by the statute. The petitioner, in the case at bar, had no cause of action until the ladder broke. There is, of course, a marked distinction between a statute which cuts down an existing right of action and one which bars an action before it has accrued or cuts down the period within which such an action may accrue.

3. The statute in dispute in the case at bar has now been revised. Public Acts of the State of Connecticut, No. 467 (1957) (Petitioner's Appendix at page 21) In its present form, the statute extends the time for bringing suit from one to three years from the date of the act or omission complained of. Thus, the sole objection to the statute has now been removed, the statute itself being consonant with the very purposes of statutes of limitations.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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